



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 230224-0055]

RIN 0648-BL91

### Fisheries of the Northeastern United States; The 2023-2025 Specifications for the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** NMFS proposes 2023-2025 specifications for the Mackerel, Squid, and Butterfish Fishery Management Plan as recommended by the Mid-Atlantic Fishery Management Council. This action proposes to set the 2023-2025 chub mackerel specifications, the 2023-2024 butterfish specifications, and the 2023 *Illex* squid specifications. This action also proposes reaffirming the 2023 longfin squid specifications.

**DATES:** Public comments must be received by *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA), the Supplemental Information Report (SIR), the Regulatory Impact Review (RIR), and the Regulatory Flexibility Act (RFA) analysis are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674-2331.

You may submit comments, identified by NOAA-NMFS-2023-0018, by the following method:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA-NMFS-2023-0018 in the Search box. Click the “Comment” icon, complete the required fields, and Enter or attach your comments.

*Instructions:* Comments sent by any other method or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Shannah Jaburek, Fishery Policy Analyst, (978) 282-8456.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

This rule proposes specifications, which are the combined suite of commercial and recreational catch levels established for one or more fishing years, for chub mackerel, *Illlex* squid, and butterfish, and reaffirms previously announced specifications for longfin squid. Atlantic mackerel specifications for 2023 were set through a separate action (88 FR 6665). Section 302(g)(1)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) states that the Scientific and Statistical Committee (SSC) for each regional fishery management council shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, ensuring maximum

sustainable yield, and achieving rebuilding targets. The ABC is a level of catch that accounts for the scientific uncertainty in the estimate of the stock's defined overfishing limit (OFL).

The regulations implementing the fishery management plan (FMP) require the Mid-Atlantic Fishery Management Council's Mackerel, Squid, and Butterfish Monitoring Committee to develop specification recommendations for each species based upon the ABC advice of the Council's SSC. The FMP regulations also require the specification of annual catch limits (ACL) and accountability measure (AM) provisions for butterfish. Both squid species are exempt from the ACL/AM requirements because they have a life cycle of less than one year. In addition, the regulations require the specification of domestic annual harvest (DAH), the butterfish mortality cap in the longfin squid fishery, and initial optimum yield (IOY) for both squid species.

On May 10, 2022 (87 FR 27952), we published a final rule in the **Federal Register** implementing the previously approved 2022 specifications for the chub mackerel, butterfish, longfin squid, and *Illex* squid fisheries.

The Council's SSC met in May and July 2022 to reevaluate the chub mackerel, longfin squid, *Illex* squid, and butterfish 2023 specifications based upon the latest information. At those meetings, the SSC concluded that no adjustments to the *Illex* squid, longfin squid, and chub mackerel specifications were warranted. However, for butterfish, the SSC recommended to use a different biological reference point based on new information from the assessment. The stock was assessed with the recently developed model known as the Woods Hole Assessment Model.

#### *Proposed 2023 Longfin Squid Specifications*

This action maintains the 2022 longfin squid ABC of 23,400 mt for 2023. The background for this ABC is discussed in the proposed rule to implement the 2021-2022 squid and butterfish specifications (86 FR 38586; July 22, 2021) and is not repeated here.

The IOY, DAH, and domestic annual processing (DAP) are calculated by deducting an estimated discard rate (2 percent) from the ABC. This results in a 2023 IOY, DAH, and DAP of 22,932 mt (Table 1). This action also maintains the existing allocation of longfin squid DAH among trimesters according to percentages specified in the FMP (Table 2). The Council will review these specifications during its annual specifications process following annual data updates each spring, and may change its recommendation for 2024 if new information becomes available.

**Table 1 – 2023 Longfin Squid**

Specification	Metric Tons
OFL	Unknown
ABC	23,400
IOY	22,932
DAH/DAP	22,932

**Table 2 – 2021-2022 Longfin Quota Trimester Allocations**

Trimester	Percent	Metric Tons
I (Jan-Apr)	43	9,861
II (May-Aug)	17	3,898
III (Sep-Dec)	40	9,173

*Proposed 2023-2024 Butterfish Specifications*

This action proposes to set the 2023 butterfish specifications and projected 2024 specifications as outlined in Table 3. The SSC reviewed the research track assessment results in May 2022. A variety of ecosystem topics were considered for inclusion in the butterfish assessment. These included predictive models for spatial distribution patterns over time, the influence of environmental drivers, the potential magnitude of natural mortality by marine mammal, bird, and fish populations, and comparative analyses of trends in recruitment and condition factor for a broad range of fish species. The proposed 2023 and projected 2024 butterfish specifications uses a new biological reference point for fishing mortality that is higher than earlier values based on updated scientific information. These specifications propose to maintain the existing butterfish mortality

cap in the longfin squid fishery of 3,884 mt and the existing allocation of the butterfish mortality cap among longfin squid trimesters (Table 4).

**Table 3 – Proposed 2023 and Projected 2024 Butterfish Specifications in Metric Tons**

Specification	2023	2024
OFL	17,631	16,096
ABC	17,267	15,764
ACT	16,404	14,976
Assumed discards	1,248	1,248
Total discards	5,132	5,132
Butterfish cap in longfin	3,884	3,884
DAH	11,271	9,844

**Table 4 – Proposed 2023 Trimester Allocation of Butterfish Mortality Cap on the Longfin Squid Fishery**

Trimester	Percent	Metric Tons
I (Jan-Apr)	43	1,670
II (May-Aug)	17	660
III (Sep-Dec)	40	1,554
Total	100	3,844

*Proposed 2023 Illex Squid Specifications*

Consistent with the Council’s recommendation, NMFS proposes to maintain the 2023 *Illex* squid ABC of 40,000 mt. The Council recommended that the ABC be reduced by the status quo discard rate of 4.52 percent, which results in a 2023 IOY, DAH, and DAP of 38,192 mt (Table 5).

**Table 5 – Proposed 2023 *Illex* Squid Specifications in Metric Tons**

Specification	2023
OFL	Unknown
ABC	40,000
IOY	38,192
DAH/DAP	38,192

*Reaffirmation of 2021-2022 Atlantic Chub Mackerel Specifications*

Amendment 21 to the FMP previously implemented chub mackerel specifications for the 2020-2022 fishing years. The Council reevaluated these specifications at its June 2022 meeting and decided to make no adjustments for the 2023-2025 fishing years. This

action proposes to set the previously implemented specifications for 2023 and projects the same for 2024-2025.

**Table 7 – Proposed 2023 and Projected 2024-2025 Atlantic Chub Mackerel Specifications in Metric Tons**

Specification	2023-2025
ABC	2,300
Annual Catch Limit (ACL)	2,262
Annual Catch Target	2,171
Total Allowable Landings	2,041

*Additional Measures Not Part of the 2023 Mackerel, Squid, and Butterfish Specifications*

In addition to implementing the specifications discussed previously, this proposed rule would reinstate regulatory text outlining the eligibility requirements required to issue a Tier 1 longfin squid moratorium permits found at § 648.4(a)(5)(A)(I) and the requirement to close the directed *Illex* fishery once a certain percentage of the DAH has been landed found at § 648.24(a)(2) that were inadvertently removed from the Code of Federal Regulations on January 1, 2023. These changes simply restore the regulatory text that was removed by mistake by the expiration of a previous action, and would be made under our administrative authority at section 305(d) of the Magnuson-Stevens Act.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial

number of small entities. The purpose, context, and statutory basis for this action is described above and not repeated here. Business entities affected by this action include vessels that are issued limited access chub mackerel, longfin squid, *Illex* squid, and butterfish permits. Although vessels issued open access incidental catch permits for these species also would be potentially affected by this action, because these vessels land only small amounts of chub mackerel, squid, and butterfish and this action would not revise the amount of squid and butterfish that these vessels can land, these entities would not be affected by this proposed rule.

Any entity with combined annual fishery landing receipts less than \$11 million is considered a small entity based on standards published in the **Federal Register** (80 FR 81194, December 29, 2015). In 2021, 69 separate vessels held commercial limited access *Illex* permits. Approximately 55 entities owned those vessels, and based on current SBA size standards, 49 would be small business entities. In 2021, 33 vessels landed over 10,000 lb (4,536 kg) with total *Illex* landings valued at \$29.7 million. From 2019-2021 *Illex* ex-vessel revenues varied from \$25.3-\$29.7 million, averaging \$28.2 million. The previously approved Atlantic mackerel, *Illex* squid, and longfin squid commercial landing limits would not be changed by this proposed action. Fishing revenue and, therefore, economic impacts of yearly Mackerel, Squid, and Butterfish specifications depend upon species availability, which may change yearly. This action is not expected to have negative impacts on any participating entities. Mackerel and longfin quotas would be maintained at status quo. *Illex* squid specifications would be maintained at status quo, although the closure threshold would be lowered from 95 percent to 94 percent to avoid quota overages, which have occurred in recent years. Still, any landings that could occur up to the 94 percent closure threshold would be higher than the 2017-2019 quotas. In 2019, landings were only slightly above the landings at the 94 percent threshold, even with the 2019 overage. Avoiding quota overages also has the long term benefit of

avoiding overfishing. Although butterfish quotas would be slightly reduced, the fishery has landed less than 75 percent of the DAH for the past several years, and therefore, the proposed quotas would still allow for a higher harvest level compared to what the fishery has recently landed.

In determining the significance of the economic impacts of the proposed action, we considered the following two criteria outlined in applicable NMFS guidance: Disproportionality and profitability. The proposed measures would not place a substantial number of small entities at a significant competitive disadvantage to large entities; all entities affected by this action would be equally affected. Accordingly, there are no disproportionate economic effects from this action between small and large entities. Proposed measures would not reduce fishing opportunities based on recent squid and butterfish landings, change any entity's access to these resources, or impose any costs to affected entities. Therefore, this action would not be expected to reduce revenues or profit for affected entities compared to recent levels. Based on the above justification, the proposed action is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements would continue to apply under the following OMB Control Number: 0648-0229, Greater Atlantic Region Dealer Purchase Reports. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Fishery closures and accountability measures.



Dated: February 27, 2023.

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Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

**PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.4, add paragraph (a)(5)(i)(A)(I) to read as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \*

(5) \*\*\*

(i) \*\*\*

(A) \*\*\* (I) *Tier 1 longfin squid moratorium permit.* Beginning in February

2019, the Regional Administrator shall automatically issue a Tier 1 longfin squid moratorium permit to any vessel that is issued a longfin squid/butterfish moratorium permit or eligible to be issued such a permit held in confirmation of permit history (CPH) during calendar year 2018 that meets the eligibility criteria in this paragraph

(a)(5)(i)(A)(I). To be eligible for a Tier 1 permit, a vessel must have been issued a valid longfin squid/butterfish moratorium permit and landed more than 10,000 lb (4,536 kg) of

longfin squid in at least one calendar year between January 1, 1997, and December 31, 2013. Fishing history, including for a permit held in confirmation of permit history, can be used by a vessel to qualify for and be issued a tier 1 longfin squid moratorium permit, provided the Regional Administrator has determined that the fishing and permit history of such vessel has been lawfully retained by the applicant. Landings data used in this qualification must be verified by dealer reports submitted to NMFS. A vessel that was not automatically issued a Tier 1 longfin squid moratorium permit may apply for such a permit in accordance with paragraph (a)(5)(i)(B) of this section.

\* \* \* \* \*

3. In § 648.24, add paragraph (a)(2) to read as follows:

**§ 648.24 Fishery closures and accountability measures.**

(a) \* \* \*

(2) *Illex*. NMFS shall close the directed *Illex* fishery in the EEZ when the Regional Administrator projects that 94 percent of the *Illex* DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.26.

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